

810-7-1-.28 Wholesaler's and Distributor's Schedule D Reporting of Cigarette Sales to Federally-Recognized Indian Tribes Relating to the Escrow Provisions and MSA Complementary Legislation.

(1) Act 2014-341 amends the tobacco escrow provisions and Master Settlement Agreement Complementary Legislation and became effective April 8, 2014. The Act further provides that the term "units sold" shall also include the number of individual cigarettes sold in the state by the tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as to which the state had power to under federal law, but did not, impose and/or collect excise tax. Without limiting the foregoing, this term specifically includes the following cigarettes, provided such cigarettes were not sold in a transaction that is exempted from Alabama taxation by federal statute or constitution:

(a) Cigarettes sold to a consumer without payment of the cigarette excise tax on the reservation lands of a federally-recognized Native American tribe,

(b) Cigarettes sold for retail sale in Alabama which were exempted from taxation pursuant to Chapter 9, Article 1 of Title 40 and/or any rule or regulation promulgated pursuant thereto, and

(c) Cigarettes sold by a seller located outside of Alabama directly to a consumer in this state, without payment of the cigarette excise tax, via mail order, telephone, internet, or other remote means.

(2) Tobacco wholesalers and distributors are required to report all cigarette and roll-your-own sales made to federally-recognized Indian Tribes on the Schedule D form according to Non-Participating Manufacturers' brands and Participating Manufacturers' brands.

(3) Solely for purposes of determining the amount of escrow required to be deposited by a Non-Participating Manufacturer pursuant to Ala. Code § 6-12-3, there shall be a rebuttable presumption that all cigarettes and roll-your-own tobacco distributed to Indian Tribes were ultimately sold to consumers in transactions not exempted from state taxation under federal law. Upon satisfactory proof that specific quantities of specific brands of cigarettes and/or roll-your-own tobacco were sold to consumers in transactions that were exempted from state taxation under federal law, the applicable Non-Participating Manufacturer may take a credit in the form of a reduction in the amount of escrow required to be deposited by the Non-Participating Manufacturer pursuant to Ala. Code § 6-12-3, in the amount of escrow corresponding to the quantity of exempt sales established by the applicable Non-Participating Manufacturer. The reduction is applicable only for sales made to documented tribal members of the federally-recognized Indian Tribe and which are consumed on reservation tribal land by the documented federally-recognized tribal member.

(4) Acceptable documentation to substantiate a credit provided for in (3) above includes copies of cigarette sales invoices, receipts, or other records establishing sales of specific quantities of specific brands of cigarettes and/or roll-your-own tobacco made on specific dates to federally-recognized tribal documented members where the tribal member resides on reservation land.

(5) Documentation must be maintained by the applicable Indian Tribe and/or Non-Participating Manufacturer to substantiate the credit or reductions and provided to the Department upon request; otherwise, the credit will be disallowed by the Department.

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Authority: Sections 40-25A-7(a)(5) and 6-12-2, Code of Alabama 1975

History: New rule: Filed August 27, 2014, effective October 1, 2014.